

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

JANUARY 14, 2002

IN RE:

PETITION FOR APPROVAL OF THE
INTERCONNECTION AGREEMENTS
AND AMENDMENTS THERETO
NEGOTIATED BETWEEN BELL SOUTH
TELECOMMUNICATIONS, INC. AND
ADELPHIA BUSINESS SOLUTIONS
OPERATIONS, INC. AND ADELPHIA
BUSINESS SOLUTIONS OF NASHVILLE,
LP PURSUANT TO THE
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO.
01-00407

ORDER

This matter came before the Tennessee Regulatory Authority ("Authority") at the July 24, 2001 Authority Conference upon the *Petition for Approval of the Interconnection Agreements and Amendments Thereto Negotiated Between BellSouth Telecommunications, Inc. and Adelphia Business Solutions Operations, Inc. and Adelphia Business Solutions of Nashville, LP. Pursuant to the Telecommunications Act of 1996.*

I. Procedural and Factual History

AVR Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P.¹ ("Hyperion") and BellSouth Telecommunications, Inc. ("BellSouth") entered into an interconnection agreement on April

¹ On October 24, 2000, AVR Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P., a wholly owned subsidiary of Adelphia Business Solutions, Inc., notified the Authority that it had changed its name to Adelphia Business Solutions of Nashville, L.P.

1, 1997. The Authority approved this agreement on July 1, 1997 under Docket No. 97-00983. On July 31, 1998, Hyperion filed a *Complaint of AVR of Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P. Against BellSouth Telecommunications, Inc. to Enforce Reciprocal Compensation and "Most Favored Nation" Provisions of the Parties' Interconnection Agreement*. The complaint was assigned to Docket No. 98-00530. Hyperion asked the Authority to determine that "the traffic exchange provisions contained in the Agreement between the parties are fully applicable to local exchange calls that terminate to [Internet Service Provider ("ISP")] customers."² Hyperion further asked that the Authority order BellSouth to amend the interconnection agreement and make payment to Hyperion for reciprocal compensation.³

On March 14, 2000, the Hearing Officer entered an order finding, in part, that ISP-bound traffic should be treated as local traffic under the interconnection agreement.⁴ The Authority adopted the Hearing Officer's ruling in an order issued on September 22, 2000.⁵ Later, the Authority denied a petition for stay filed by BellSouth.⁶

This matter proceeded to appeal before the United States District Court for Tennessee, Middle District.⁷ On January 23, 2001, the Authority sent BellSouth a data request regarding the status of payment by BellSouth to Hyperion in compliance with the Authority's order of October 23,

² *In re: Complaint of AVR of Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P. Against BellSouth Telecommunications to Enforce Reciprocal Compensation and "Most Favored Nation" Provisions of the Parties Interconnection Agreement*, Docket No. 98-00530, Complaint, p. 19 (Jul. 31, 1998)

³ *See id.* at 19-20.

⁴ *See id.*, *Initial Order of Hearing Officer on the Merits*, pp. 15-23 (Mar. 14, 2001).

⁵ *See id.*, *Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer* pp. 10-11 (Sept. 22, 2000).

⁶ *See id.*, *Order Denying BellSouth's Petition for Stay and Requiring Compliance with Authority's September 22, 2000 Order*, p. 6 (Oct. 23, 2000).

⁷ *BellSouth Telecommunications, Inc. v. AVR of Tennessee, L. P., d/b/a Adelphia Business Solutions of Nashville, L. P. (formerly d/b/a Hyperion of Tennessee L.P.)*, the Tennessee Regulatory Authority, Sara Kyle, Chairman, H. Lynn Greer, Jr. Director and Melvin J. Malone, Director, Docket No. 3-00-1000, *Complaint and Petition for Judicial Review* (Oct. 23, 2000).

2000.⁸ On January 24, 2001, BellSouth filed a letter in response to the Authority's data request. In the letter, BellSouth advised the Authority that BellSouth and Hyperion had entered into a regional settlement of the issues in Docket No. 98-00530. BellSouth further stated that it had "made all payments due under the terms of the settlement and intends to dismiss the appeal in the United States District Court."⁹ In response to a second set of data requests, BellSouth explained that the regional settlement included rates, terms, and conditions different from those contained in the parties' interconnection agreement approved by the Authority in Docket No. 97-00983 and that the parties would memorialize these new rates, terms, and conditions in an interconnection agreement subject to approval by the Authority.¹⁰

On May 1, 2001, the Directors, acting as arbitrators, deliberated issues in Docket No. 99-00430.¹¹ Because counsel of record in Docket No. 99-00430 were the same as counsel in Docket No. 98-00530, the Directors sought to obtain a date from counsel as to when the interconnection agreement referenced in BellSouth's response to the Authority's second data request would be filed. After hearing comments from counsel, the Directors unanimously voted to require the filing of the interconnection agreement or a detailed explanation as to why the interconnection agreement could not be filed on or before May 4, 2001.¹² As directed, BellSouth filed an Interconnection Agreement and Amendments ("Agreement") as well as a *Petition for Approval of the Interconnection Agreements and Amendments Thereto Negotiated between BellSouth Telecommunications, Inc. and*

⁸ See *In re: Complaint of AVR of Tennessee, L.P. d/b/a Hyperion of Tennessee, L.P. Against BellSouth Telecommunications to Enforce Reciprocal Compensation and "Most Favored Nation" Provisions of the Parties Interconnection Agreement*, Docket No. 98-00530, *Order Denying BellSouth's Petition for Stay and Requiring Compliance with Authority's September 22, 2000 Order* (Oct. 23, 2000).

⁹ *Id.*, Response to Authority Data Request, Letter from BellSouth (Sept. 24, 2001).

¹⁰ See *id.*, Response to Second Authority Data Request, Item Nos. 4 and 5 (Feb. 6, 2001).

¹¹ *In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*.

¹² See Transcript of Proceedings, May 1, 2001, pp. 8-10 (Arbitration following Authority Conference).

Adelphia Business Solutions Operations, Inc. and Adelphia Business Solutions of Nashville, LP.
Pursuant to the Telecommunications Act of 1996 on May 4, 2001. This filing was assigned Docket
No. 01-00407.

II. Findings and Conclusions

The Telecommunications Act of 1996 requires that all interconnection agreements be submitted to the appropriate state commission for approval.¹³ The state commission may approve or reject the agreement or it may choose not to act, under which circumstance the agreement will be deemed approved after a statutorily mandated period of time.¹⁴ Section 252(e)(2) provides that a state commission may reject an interconnection agreement if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.”¹⁵

While neither ground for rejection specifically exists in this case, the Agreement contains language that is inconsistent with previous Authority orders. Specifically, Paragraph 6.1.3 is inconsistent with the Authority’s rulings in Docket No. 98-00530 regarding reciprocal compensation for ISP-bound traffic. Paragraph 6.1.3 reads as follows:

The Parties have been unable to agree upon whether dial up calls to Information Service Providers (“ISPs”) should be considered Local Traffic for purposes of this Agreement. Dial-up Calls are defined as calls to an ISP that are dialed by using a local dialing pattern (7 or 10 digits) by the calling party to an ISP server physically located in the local calling area (referred to “ISP-bound Traffic”). However, without prejudice to either Party’s position concerning the application of reciprocal compensation to ISP-bound Traffic, the Parties agree for purposes of this Agreement only to compensate each other for the delivery of ISP-bound Traffic at the same per minute use rates set forth in Paragraph 6.1.2.¹⁶ It is expressly understood and agreed that this inter-carrier compensation mechanism for ISP-bound Traffic is being

¹³ See 47 U.S.C. § 252(e)(1) (Supp. 2000).

¹⁴ See *id.* § 252(e)(4). A negotiated agreement is deemed approved ninety (90) days after its submission for approval, and an arbitrated agreement is deemed approved thirty (30) days after its submission for approval.

¹⁵ *Id.* § 252 (e)(2).

¹⁶ This Paragraph sets forth the reciprocal compensation rates for local traffic.

established: (1) in consideration for a waiver and release by each party for any and all claims for reciprocal compensation for ISP-bound Traffic exchanged between the parties prior to expiration of their predecessor interconnection agreements, which is hereby given; and (2) subject to the terms and conditions in section 6.1.4.¹⁷

Paragraph 6.1.6 is inconsistent with the Authority's ruling in a previous arbitration. Paragraph 6.1.6 reads:

The Parties have been unable to agree as to the appropriate compensation for calls which originate in a Local Calling Area and terminate to a physical location outside of that Local Calling Area but to a number assigned to a rate center within that Local Calling Area (hereafter, Virtual NXX traffic). However, without prejudice to either Party's position concerning the application of reciprocal compensation or access charges to Virtual NXX traffic, the Parties agree for purposes of this Agreement only, and as an integral portion of the consideration for the Parties' resolution of the terms and conditions in Sections 1.5 through 1.8, 2.9 through 2.9.6, 6.1 through 6.1.5, and 6.8.1 and on an interim basis until the FCC issues an Order addressing the issue of Virtual NXX traffic, neither Party shall bill the other reciprocal compensation, intercarrier compensation or switched access in connection with the exchange of any virtual NXX traffic as described in the first sentence of this paragraph. Once there is an Effective FCC Order addressing the issue of Virtual NXX traffic, the Parties agree to amend this Interconnection Agreement to comply with the Order on a prospective basis only within 30 days of either Party's written request. No "true-up" shall be required in connection with such an Effective Order.¹⁸

This language is inconsistent with the Authority's ruling in the arbitration between BellSouth and Intermedia Communications, Inc. The pertinent order reads:

Based on the above findings and conclusions, the Arbitrators voted unanimously that the parties may establish their own local calling areas and assign numbers for local use anywhere within such areas as long as the parties properly rate, time, and compensate each other and other carriers for the mutual exchange of such traffic. Additionally, the Arbitrators voted unanimously that calls to an NPA/NXX in a local calling area outside the local calling area where the NPA/NXX is homed shall

¹⁷ *Petition for Approval of the Interconnection Agreements and Amendments Thereto Negotiated between BellSouth Telecommunications, Inc. and Adelphia Business Solutions Operations, Inc. and Adelphia Business Solutions of Nashville, LP. Pursuant to the Telecommunications Act of 1996, Agreement Between BellSouth Telecommunications, Inc. and Adelphia Business Solutions Operations, Inc. Adelphia Business Solutions of Nashville, LP, Attachment 3, p. 18 (May 4, 2001) (footnote 14 added).*

¹⁸ *Petition for Approval of the Interconnection Agreements and Amendments Thereto Negotiated between BellSouth Telecommunications, Inc. and Adelphia Business Solutions Operations, Inc. and Adelphia Business Solutions of Nashville, LP. Pursuant to the Telecommunications Act of 1996, Agreement Between BellSouth Telecommunications, Inc. and Adelphia Business Solutions Operations, Inc. Adelphia Business Solutions of Nashville, LP, Attachment 3, p. 19 (May 4, 2001).*

be treated as intrastate, interexchange toll traffic for purposes of intercarrier compensation and, therefore, are subject to access charges.¹⁹

Given the inconsistencies between the language of the Agreement and previous Authority rulings, a majority of the Directors voted to take no action on the Agreement.²⁰

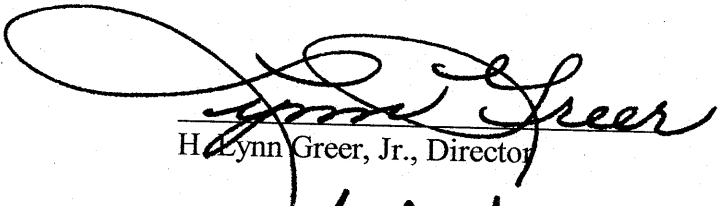
IT IS THEREFORE ORDERED THAT:

No action shall be taken on the *Petition for Approval of the Interconnection Agreement and Amendments Thereto Negotiated between BellSouth Telecommunications, Inc. and Adelphia Business Solutions Operations, Inc. and Adelphia Business Solutions of Nashville, LP.* Pursuant to the Telecommunications Act of 1996 filed by BellSouth Telecommunications, Inc. on May 4, 2001.

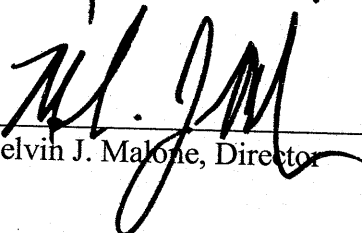
By operation of Section 252(e)(4) of the Telecommunications Act of 1996, the Interconnection Agreement and Amendments thereto shall be deemed approved on August 2, 2001.

* * *

Sara Kyle, Chairman

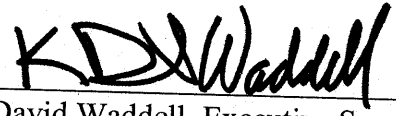


H. Lynn Greer, Jr., Director



Melvin J. Malone, Director

ATTEST:



K. David Waddell, Executive Secretary

¹⁹ See *In re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, *Interim Order of Arbitration Award*, pp. 43-44 (June 25, 2001).

²⁰ Chairman Kyle did not vote with the majority. Instead, she moved to approve the Agreement.